

In re) Fair Hearing No. 16,806
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Appeal of)

The petitioner appeals a decision of the Department of PATH establishing an overpayment against her in the ANFC program that occurred because of failure by the agency to count income received by her in calculating her benefits.

1. The petitioner has been an ANFC recipient since at least October 1999. For reasons unexplained, from October 1999 through October 2000, a period of thirteen months, the Department failed to include in the computation of the petitioner's benefits \$12.00 per month that is paid to the petitioner's child from that child's father's Social Security disability benefits.

2. When the Department discovered its error it mailed the petitioner a notice informing her that she had received \$156.00 more in ANFC benefits during the above period than what she was entitled to. The Department agrees that it was not the petitioner's fault but rather the Department's error that led to the overpayments.

3. The petitioner does not dispute the figures used by the Department. It is, therefore, found that the amount of the overpayment of ANFC \$156.00.

ORDER

The decision of the Department to establish an overpayment in the ANFC program in the amount of \$156.00 should be affirmed.

REASONS

The Department has shown that the petitioner did receive ANFC benefits in excess of what she should for the period from October 1, 1999 through October 31, 2000. The Department concedes that these overpayments were the result of its error and not the petitioner's. However, under the pertinent regulations overpayments which were the result of an error by the State agency must still be established and are subject to recovery.

The ANFC regulations require that:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

. . .

Recoupment shall be made each month from any gross income (without application of disregards), liquid resources and

ANFC payments so long as the assistance unit retains from its combined income 90 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no income other than ANFC, the amount of the recoupment will equal 10 percent of the grant amount.

If, however, the overpayment results from Department error or oversight, the assistance unit must retain from its combined income 95 percent of the amount payable to an assistance unit of the same composition with no income. For assistance units with no income other than ANFC, the amount of the recoupment will equal 5 percent of the grant amount.

. . .

W.A.M. 2234.2

The above regulation means that the Department is required to recover any amounts wrongfully paid regardless of the reason for it by recouping it out of currently paid ANFC benefits. However, those who were overpaid because of Department error get a lower rate of recoupment from their benefits. If the petitioner is still on ANFC, it is assumed that she will receive another notice telling her how much will be recouped. If she feels that the recoupment amount is incorrect she can appeal that.

Inasmuch, however, as the Department's decision establishing the amount of the overpayment and the petitioner's liability to repay it is in accord with the above regulation the Board is bound by law to affirm. 3 V.S.A. 3091(d) and Fair Hearing Rule No. 17.

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